IN THE UNITED STATES DISTRICT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ABDUL AZIZ,)
Plaintiff,)
)
v.)
)
ORBITAL SCIENCE CORP.,)
Defendant.)

ORDER

This matter came before the Court on defendant's motion to dismiss pursuant to Rule 12 (b) (6), Fed, R. Civ. P., and on plaintiff's motion for a default judgment pursuant to Rule 55(b) (2), Fed. R. Civ. P.

For the reasons stated from the bench,

(1) defendant's motion is **GRANTED'** and the complaint is hereby **DISMISSED.**

(2) plaintiff's motion for a default judgment is **denied** because defendant's motion to dismiss was a timely filed, responsive pleading pursuant Rule 12.

The clerk is directed to send copies of this order to all counsels of record.

T.S. Ellis, III
United States District Judge

Alexandria, Virginia
January 16, 1997

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ABDUL AZIZ No. 98-1281

Plaintiff-Appellant

v.

ORBITAL SCIENCE CORPORATION,

defendant-Apellee.

Appall from the United State District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Elise, III, District Judge
(CA-97-1769-A)

Submitteded: September 30, 1998
Decided October 19, 1998

Before ERVIN, LUTTING, and WILLIANS, Crcuitt Judges

Affirmed by unublished per curiam

COUNSEL,

Abul Aziz, Apllant Pro Se. Edward R, Noonman, ECKERT, SEAMANS, CHERIN MELLOIT, WASHINGTON D.C. for Appellee

---

Unpublished opinins are not binding precedent in this circuit See L Rocal Rule 36(c).

OPINION

PER CURIAM:

Abdul Aziz appeals the district court's order granting Orbital Science Corporation's (Orbital) motion to dismiss this action, filed pursuant to (Citation Ommitted. CO), and the Age Discrimination inEmployment Act (ADEA), (CO). Orbital moved to dismiss the action on the ground that it was untimely filed.The district court held a hearing on the motion which Aziz did not attend and granted the motion to dismiss.

Title VII and ADEA allow an aggrieved party 90 days after receipt of rigt to sue letter from the EEOC to file a civil action, (CO) A claimant who fails to file a complaint within the 90-day statutory time period generally forefits his right to pursue his claim.(CO).The time period is subject to equitable tolling, (CO), but one who fails to act dilligently cannot invoke equitable principles to excuse lack of dilligence. (CO).

Here, Aziz was mailed write to sue letter on March 4,97. He filed an intial, timely action in the district court of Columbia. Orbital filed a motion to dismiss for in adequate service of process or for change of venue. The case was transferred to the Eastern District of VA. The district court informed Aziz that he had until August 6 to serve Orbital under FRCP 4. Orbital again moved to dismiss, and following the hearing that Aziz did not attend, the district court dismissed the action without prejudice for impoper servce of process. Aziz refiled his complaint on December 4, 1997, 275 days after the right to sue letter was issued and fifty-one days after the first action was dismissed. At a hearing that Aziz did not attend, the district granted Orbital's motion to dismuss.

A dismissal without prejudice does not toll the statutory

period for filing an action. (CO). Nothing in record suggest that Aziz entiled to equitable tolling of the stutary time period. Therefore, although we deny, Orbital's motion to dismiss the appeal, we affirm the Judgment of the district court. We dispensed with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

U. S. COURT OF APPEALS: FOR THE FORTH CIRCUIT

ABDUL AZIZ, **APPEALS COURT NO. 98-1281**
Plaintiff, **D.C. No. CA-97-1760-A**

v.

ORBITAL SCIENCE CORP.,
Defendant.

APPELLANT'S INFORMAL BRIEF

1. Jurisdiction: U.S. District Court of Virginia in Alexandria.

2. Court order dated, January 16, 1998, dismissing the complaint.

Issue 1.

In the above court order, the court has used the phrase, "For the reasons stated from the bench." Appellant requested the court in writing and the court reporter by telephone three times each, and he himself went to the court one day, he could not yet procure the copy of the bench order (the transcript). Until he gets a copy of the said transcript he cannot raise any issue.

WHEREFORE, this humble plaintiff prays that the honorable appeals court order the district to furnish the appellant with a copy of the same document.

Respectfully submitted,

Date Mailed: 4-7-1998

Abdul Aziz, Ph. D. Plaintiff pro se, 9179 Springhill Lane Greenbelt, MD 2077--1245. Phone: 301-513-9164

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ABDUL AZIZ PLAINTIFF

VS. NO. LR-C-96-843

UNIVERSITY OF ARKANSAS
AT LITTLE ROCK DEFENDANT

ORDER

Pending before the court is the plaintiff's pro se Motion for Summary Judgment in the above styled case. Plaintiff's complaint alleges that he was not hired for a faculty position at the University of Arkansas at Little Rock (UALR) in violation of the Age Discrimination in Employment Act (ADEA), and Title VII based on race and national origin.

In his motion for Summary Judgment, plaintiff asks the court to hold that a less qualified person was selected for the UALR position. Plaintiff's request requires the court to make a factual decision on a genuine issue of material fact which is precluded pursuant to Federal Rules of Civil Procedures 56.

Plaintiff's motion for Summary Judgment (#10) is denied.

Sd/_____
James M. Moody
July 2, 1997 United States District Judge